

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

EDWARD HERNANDEZ,

Petitioner,

vs.

No. CV 18-00511 JCH/JHR

BETTY JUDD, WARDEN,

Respondent.

MEMORANDUM OPINION AND ORDER OF DISMISSAL

THIS MATTER is before the Court under Fed. R. Civ. P. 41(b) on the Petition for Writ of Habeas Corpus filed by Petitioner Edward Hernandez on May 31, 2018. (Doc. 1). The Court will dismiss the Petition without prejudice for failure to comply with 28 U.S.C. §§ 1914 and 1915, failure to comply with Court orders, and failure to prosecute this case.

Petitioner, Edward Hernandez, filed this habeas corpus proceeding under 28 U.S.C. § 2254. (Doc. 1). Petitioner did not pay the \$5.00 filing fee or submit an application to proceed without prepayment of fees or costs pursuant to 28 U.S.C. § 1915. On June 4, 2018, the Court ordered Petitioner to cure this deficiency within 30 days by either paying the \$5.00 filing fee or submitting an application to proceed *in forma pauperis*. (Doc. 2). The Order advised Petitioner that, if he failed to cure the deficiency within the 30-day time period, the Court could dismiss this proceeding without further notice. (Doc. 2 at 1). The Court also sent Petitioner the forms for submitting an application under § 1915. (Doc. 2 at 2). More than 30 days elapsed after entry of the Court's Order to Cure Deficiency and Petitioner did not pay the \$5.00 filing fee, submit an application to proceed under § 1915, or otherwise respond to the Court's June 4, 2018 Order.

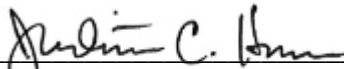
As a result, on August 13, 2018, the Court entered an Order to Show Cause. (Doc. 8). The Order directed Petitioner to pay the \$5.00 filing fee, submit an application to proceed *in forma pauperis*, or show cause why the case should not be dismissed for failure to comply with the June 4, 2018 Order. (Doc. 8). The Court set a deadline of 21 days for Petitioner to comply with the Order to Show Cause. (Doc. 8 at 2). More than 21 days has elapsed, and Petitioner has never paid the \$5 filing fee, submitted an application to proceed *in forma pauperis*, shown cause, or otherwise communicated with the Court.

Under 28 U.S.C. §§ 1914(a) and 1915(a), the Court is required collect the filing fee from the Petitioner or authorize Petitioner to proceed without prepayment of the fee. Petitioner has failed to either pay the \$5.00 filing fee or submit an application to proceed under § 1915. Petitioner was directed to comply with the statutory requirements or show cause why he should not be required to do so on two separate occasions. (Doc. 2, 8). Petitioner failed to respond to either of the Court's Orders.

The Court may dismiss an action under Fed. R. Civ. P. 41(b) for failure to prosecute, to comply with the statutes or rules of civil procedure, or to comply with court orders. *See Olsen v. Mapes*, 333 F.3d 1199, 1204, n. 3 (10th Cir. 2003). Therefore, the Court will dismiss this proceeding pursuant to Rule 41(b) for failure to comply with 28 U.S.C. §§ 1914, 1915, failure to comply with the Court's Orders of March 12, 2018 and April 19, 2018, and failure to prosecute this proceeding.

IT IS ORDERED that the Petition for Writ of Habeas Corpus filed by Petitioner Edward Hernandez on May 31, 2018. (Doc. 1) is **DISMISSED** without prejudice under Fed. R. Civ. P. 41(b) for failure to comply with 28 U.S.C. §§ 1914 and 1915, failure to comply with the Court's

June 4, 2018 Order to Cure Deficiency and August 3, 2018 Order to Show Cause, and failure to prosecute this case.


UNITED STATES DISTRICT JUDGE